

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BENJAMIN ARCHULETA-ALLODIAL,

Plaintiff,

v.

No. 1:19-cv-00084-WJ-JFR

STATE OF NEW MEXICO,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court on Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed January 29, 2019 ("Application"). For the reasons stated below, the Court **DENIES** the Application **as moot**.

The Complaint

Plaintiff filed his Complaint using the form "Civil Rights Complaint Pursuant to 42 U.S.C. § 1983." Doc. 1 at 1, filed January 29, 2019. Plaintiff states:

background of case: *Redress of invalid Bill and Preliminary Injunction Barring the Proceeding for Want of Original Habeas Corpus Under the law of the land living Constitutions Precedent and Explicit Right Invoked to the Sovereign Grand Jury Muslim Elect and Reserved "Potus" Ruling Right. Sequestered.

....

Count I: U.S. Article 111:3 Constitution via treason and Terror and Tyranny of Judicial Commerce via Inferior Court.

....

Count II: Alienation via Alien Democratic Lobbyist Angalo's and Hispantee Political bodies grossly violating the Natural, Inherent, Reserved, and Colladural Right of [Plaintiff] Demanding (5) Million Dollars from the State treasury without Delay.

....

Count III: gross Violation of U.S. Article IV:4 Ipso and V:1 Guarentee's living Constitution life and limb trust and Sovereignty God Trust.

[sic] Complaint at 2-4.

Jurisdiction

As the party seeking to invoke the jurisdiction of this Court, Plaintiff bears the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013) (“Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction”); *Evitt v. Durland*, 243 F.3d 388 *2 (10th Cir. 2000) (“even if the parties do not raise the question themselves, it is our duty to address the apparent lack of jurisdiction sua sponte”) (quoting *Tuck v. United Servs. Auto. Ass'n*, 859 F.2d 842, 843 (10th Cir.1988)).

Plaintiff has also not shown that the Court has jurisdiction over his claims against the State of New Mexico. “With certain limited exceptions, the Eleventh Amendment prohibits a citizen from filing suit against a state in federal court.” *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002). There are “two primary circumstances in which a citizen may sue a state without offending Eleventh Amendment immunity. Congress may abrogate a state's Eleventh Amendment immunity . . . [or a] state may . . . waive its Eleventh Amendment immunity and consent to be sued.” *Id.* at 1181. Neither exception applies in this case. “First, the United States Supreme Court has previously held that Congress did not abrogate states' Eleventh Amendment immunity when it enacted 42 U.S.C. § 1983.” *Id.* (citing *Quern v. Jordan*, 440 U.S. 332, 345 (1979)). Second, Plaintiff does not allege in his complaint that the State of New Mexico waived its Eleventh Amendment immunity in this case.

The Court dismisses the Complaint without prejudice for lack of jurisdiction. *See Fed. R. Civ. P. 12(h)(3)* (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir. 2006) (“[D]ismissals for lack of jurisdiction should be without prejudice because the court, having

determined that it lacks jurisdiction over the action, is *incapable* of reaching a disposition on the merits of the underlying claims.”).

Because it is dismissing this case, the Court denies Plaintiff’s Application to proceed *in forma pauperis* as moot.

IT IS ORDERED that:

- (i) This case is **DISMISSED without prejudice**; and
- (ii) Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed January 29, 2019, is **DENIED as moot**.



WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE